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15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 United States of America,  
18 Respondent/Plaintiff,  
19 v.  
20 Gerald Leslie Tate,  
21 Petitioner/Defendant.

22 Case No. 2:14-cr-00384-APG-CWH  
23 Case No. 2:19-cv-02175-APG  
24 **Petitioner/Defendant Gerald  
Tate's Unopposed Motion to Stay  
and Hold in Abeyance His Pro Se  
Second Motion to Vacate under  
28 U.S.C. § 2255 for 90 Days**

25 **ORDER**

26 **Certification:** This Motion is timely filed, as no time limitation applies.

27 Petitioner/Defendant Gerald Leslie Tate moves this Court to stay and hold  
28 in abeyance his pro se Second Motion to Vacate under 28 U.S.C. § 2255 for 90  
29 days to allow the Office of the Federal Public Defender to review his case and, if  
30 it deems appropriate to do so, move to amend his Second Motion to Vacate before  
31 the government is required to file its Response thereto.

32 On June 21, 2019, the United States Supreme Court held in *Rehaif v.*  
33 *United States*, 139 S. Ct. 2191 (2019), that a defendant charged with unlawful

1 possession of a firearm under 18 U.S.C. §§ 922(g)(1) and 924(a)(2) must know of  
2 his prohibitive firearm status at the time of the alleged firearm possession.  
3 Following this decision, on September 27, 2019, Chief Judge Miranda M. Du  
4 issued General Order 2019-06 presumptively appointing the Office of the Federal  
5 Public Defender (FPD) “to represent any defendant previously determined to  
6 have been entitled to appointment of counsel, or who is now entitled to  
7 appointment of counsel, to determine whether that defendant may qualify for  
8 relief under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of *Rehaif* . . . .” If so,  
9 the FPD is appointed “present any petitions, motions or applications relating  
10 thereto to the Court for adjudication that the FPD deems appropriate under”  
11 *Rehaif*. See General Order 2019-06, p. 1.

12 The FPD is thus presumptively appointed under General Order 2019-06 to  
13 review Mr. Tate’s case to determine his eligibility for relief under *Rehaif* as he  
14 has a conviction under §§ 922(g)(1) and 924(a)(2). ECF No. 26. However, Mr.  
15 Tate filed a pro se Second Motion to Vacate under 28 U.S.C. § 2255 asserting a  
16 claim for relief under *Rehaif* on December 16, 2019. ECF No. 61. The Court has  
17 ordered the government to file a Response to Mr. Tate’s Second Motion to Vacate  
18 by January 6, 2020. ECF No. 62.

19 Due to undersigned counsel only recently becoming aware that Mr. Tate is  
20 potentially eligible for relief under *Rehaif* and having now received permission  
21 from Mr. Tate to review his case for the purpose of potentially serving as his  
22 counsel in this habeas litigation, counsel requests this Court stay and hold in  
23 abeyance Mr. Tate’s Second Motion to Vacate to allow counsel 90 days to review  
24 his case. During that time, undersigned counsel will review Mr. Tate’s case to  
25 determine whether, pursuant to General Order 2019-06, it is appropriate for  
26 undersigned counsel to file a First Motion to Amend Mr. Tate’s Second Motion to

1 Vacate along with a proposed First Amended Second Motion to Vacate and/or file  
2 the appropriate motion in the Ninth Circuit Court of Appeals for permission to  
3 pursue the instant habeas litigation.

4 Undersigned counsel contacted counsel for the government, Appellate  
5 Chief Elizabeth O. White, regarding this Mr. Tate's request that the Court stay  
6 Mr. Tate's habeas proceedings for 90 days as set forth herein on December 20,  
7 2019. Ms. White states she has no opposition to this request.

8 Mr. Tate thus requests the Court vacate the government's Response due  
9 date and issue an Order staying this matter and holding it in abeyance for 90  
10 days, or until the FPD files documents with the Court on Mr. Tate's behalf  
11 necessitating that the stay be lifted, whichever occurs sooner.

12 Dated: December 20, 2019.

13 Respectfully submitted,

14 RENE L. VALLADARES  
15 Federal Public Defender

16 By: /s/ Amy B. Cleary

17 Amy B. Cleary  
18 Assistant Federal Public Defender

19  
20 **IT IS SO ORDERED.**

21  
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23   
24 UNITED STATES DISTRICT JUDGE  
25 December 20, 2019.  
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